

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3377 of 2017
and C.M.P.No.15737 of 2017

1.Thimmakka

Ramesh alias Ramesh Reddy
2nd petitioner/2nd defendant
in the Court below died

2.Chandira Reddy alias Jayachandra Reddy

... Petitioners

Vs.

1.Prema

2.Venkattamma

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decretal order dated 30.01.2017 made in I.A.No.182 of 2015 in O.S.No.252 of 2008 on the file of the District Munsif Court, Hosur.

For Petitioners : Mr.R.Bharath Kumar
for Mr.V.Nicholas

For R1 : Ms.Maitreya
for Mr.R.Jayaprakash
For R2 : No appearance

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).)

Civil Revision Petition is filed against the fair and decretal order dated 30.01.2017 made in I.A.No.182 of 2015 in O.S.No.252 of 2008 on the file of the District Munsif Court, Hosur.

2.The petitioners are defendants 1 and 3, one Ramesh @ Ramesh Reddy is 2nd defendant, 1st respondent is plaintiff and 2nd respondent is the 4th defendant in O.S.No.252 of 2008 on the file of the District Munsif Court, Hosur. The 1st respondent filed the said suit against the petitioners, 2nd defendant and 2nd respondent for partition of the suit schedule property into five equal shares, seeking permission to the 1st respondent to file a final decree petition to divide the suit schedule properties as per preliminary decree by appointing a Court

Commissioner, to allot 1/5th share to the 1st respondent, to deliver the possession to the 1st respondent and to declare the partition deed vide document No.663/2007 dated 07.05.2007 as null and void. The petitioners, 2nd respondent and 2nd defendant did not file written statement, they were set exparte and exparte preliminary decree was passed on 16.04.2009. The petitioners, 2nd respondent and 2nd defendant filed I.A.No.182 of 2015 to condone the delay of 2132 days in filing petition to set aside the exparte decree.

3.According to the petitioners, 2nd respondent and 2nd defendant, earlier O.S.No.10 of 1980 was filed for partition and separate possession against the 1st petitioner and 1st respondent. The said suit was compromised and as per compromise decree, the 1st petitioner and 1st respondent are in separate possession and enjoyment of the properties. After compromise decree in the said suit, 1st respondent filed present suit in O.S.No.252 of 2008 for partition against the petitioners, 2nd respondent and 2nd defendant. A Panchayat was convened and matter was settled. The

decision taken in the Panchayat was informed to the 1st respondent. First petitioner believed that 1st respondent and her husband will withdraw the suit and hence, they did not appear and ex parte decree was passed. In breach of confidence, the 1st respondent obtained ex parte decree. The delay in filing petition to set aside the ex parte decree is neither wilful nor wanton and prayed for allowing the I.A.

4.The 1st respondent filed counter affidavit and stated that reason given by the petitioners, 2nd respondent and 2nd defendant was invented for the purpose of filing application and opposed the said application.

5.The learned Judge considering the averments in the affidavit and counter affidavit, dismissed the I.A. holding that the petitioners, 2nd respondent and 2nd defendant have not given sufficient and valid reason and the reasons given by them are not proved by oral and documentary evidence.

6. Against the said fair and decretal order dated 30.01.2017 made in I.A.No.182 of 2015 in O.S.No.252 of 2008, the petitioners have come out with the present Civil Revision Petition.

7. The learned counsel appearing for the petitioners contended that the learned Judge failed to see that already there was compromise decree dated 26.02.1980 passed in O.S.No.10 of 1980 on the file of District Munsif Court, Hosur, for the very same properties and hence, the present suit filed by the 1st respondent is not maintainable. The 1st respondent is a party to the said suit and compromise decree. The proper course for the 1st respondent is only to file a petition to set aside the compromise decree or to file a suit to declare the compromise decree as null and void on the ground of fraud and misrepresentation. The petitioners contacted the 1st respondent, enquired about the present suit and that the 1st respondent and her husband gave assurance to withdraw the suit. Believing their words, the petitioners did not take any steps to defend the said suit. The learned Judge ought to have given an opportunity to the petitioners to

contest the suit on merits. The reasons given by the petitioners are valid and sufficient for condoning the delay and prayed for allowing the Civil Revision Petition.

8.Though notice was served on the 2nd respondent and her name is printed in the cause list, there is no representation for her either in person or through the counsel.

9.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

10.From the materials available on record, it is seen that the 1st respondent has filed O.S.No.252 of 2008 for partition against the petitioners, 2nd respondent and one Ramesh @ Ramesh Reddy/2nd defendant. After service of summons, the petitioners, 2nd respondent and 2nd defendant did not file written statement, they were set exparte and

exparte decree was passed on 16.04.2009. After five years two months, the petitioner, 2nd respondent and 2nd defendant filed present I.A. to condone the delay of 2132 days in filing petition to set aside the exparte decree. According to the petitioners, after filing suit by the 1st respondent, a Panchayat was conducted, the matter was settled and 1st respondent was informed about the settlement. It is seen from the affidavit filed in support of the above I.A. that the petitioners have not given any details as to when Panchayat held.

11.It is pertinent to note that in the grounds raised in the present Civil Revision Petition, the petitioners have stated that in the earlier suit O.S.No.10 of 1980 filed against the 1st petitioner and 1st respondent, the matter was settled and compromise decree was passed on 26.02.1980 for the very same properties and the 1st respondent without setting aside the compromise decree, present suit filed is not maintainable. Further, the petitioners have stated that they have contacted the 1st respondent, enquired about the suit and the 1st respondent and her husband gave

assurance to withdraw the suit. In view of the same, the petitioners have not taken any steps to defend the suit. It is not the case of the petitioners and 2nd respondent that 1st respondent was also present before the Panchayat and agreed for settlement. In the affidavit filed in support of the present I.A., it has been stated that 1st respondent was informed about the settlement arrived in the Panchayat and the petitioners believed that 1st respondent and her husband will withdraw the suit. The petitioners have also not stated that when they came to know about the exparte decree and other particulars about their knowledge. The petitioners have also not produced any materials with regard to alleged Panchayat, wherein the matter was settled by producing record of the Panchayat or by examining any of the Panchayathars. The reason given in the affidavit is not sufficient, bonafide and acceptable to condone the delay of 2132 days in filing the petition to set aside the exparte decree. The learned Judge considering all the above materials, rightly dismissed the I.A. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

12.For the above reasons, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

16.09.2021

Index : Yes/No
Internet: Yes/No
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To

The District Munsif
Hosur.

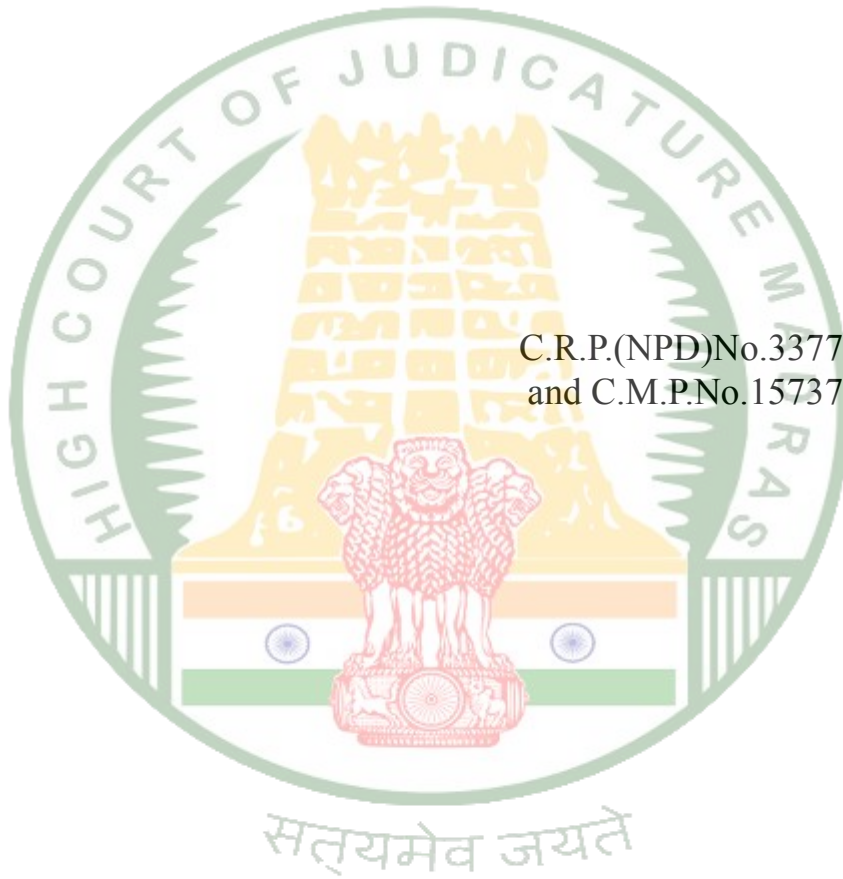


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V.M.VELUMANI,J.

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